

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20246

Docket Number MW-20355

Irwin M. **Lieberman**, Referee

(Brotherhood of **Maintenance** of Way **Employees**

PARTIES TO DISPUTE: (

(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
that:

(1) The dismissal of **Trackman** R. W. Kelley on January 10, 1973  
was without just and sufficient cause and wholly disproportionate to the  
offense with which charged (System File R. W. **Kelley/12-39** (73-1)).

(2) **Trackman** R. W. Kelley be restored to service **with** seniority,  
vacation and all other rights unimpaired; his record be cleared of the  
charge; he be reimbursed for all wages lost.

OPINION OF BOARD: Claimant was dismissed from service on January **10**, 1973  
having been afforded an investigatory hearing and hav-  
ing been found guilty of assaulting his foreman.

Petitioner made no contention that any of Claimant's procedural  
rights were violated and predicated its case on the argument that the fore-  
man was the aggressor. The transcript contains substantial and **uncontro-**  
**verted** evidence that Claimant assaulted the Foreman after a running discus-  
sion, without heat, in which the Foreman refused to accede to a request by  
Claimant. Three witnesses and the Foreman all testified that Claimant struck  
the Foreman a few times without any provocation; Claimant testified that he  
indeed struck the Foreman first, but in self-defense since the Foreman had a  
**knife** in his hand.

The Board has held over a long period of time that it will not  
make credibility findings in disciplinary cases; the Carrier's judgment must  
be accepted when there are conflicts in testimony. In this dispute the pre-  
ponderance of **the** testimony supports the Carrier's conclusions. Further,  
we see no reason to characterize the discipline imposed as being improper  
in any sense; the sanction of discharge for assault cannot be **termed** arbi-  
trary or capricious.

In view of the foregoing, the claim is denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record  
and all the evidence, finds and holds:

That the parties waived oral hearing;

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That the Carrier and the ~~Employees~~ involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has **jurisdiction** over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of **May** 1974.